appears reasonable, since, if jurisdiction were intended to continue only while the company remained in the state, provision for service on any persons other than the regular business agents of the company would scarcely be necessary.

"POLICE POWER" UNDER THE WILSON ACT OF 1890. — The right of a state to prohibit or regulate in any way the sale of domestic intoxicating liquors has long been undisputed.[1] But these prohibitions and regulations were rendered partially ineffective in 1890 by a decision of the Supreme Court that a state could not interfere with the sale of imported liquors still in their "original packages."[2] As these "original packages" could, under the decisions at that date, be of any size, the liquors were imported in convenient parcels; and, under the protection of the court's decision, were sold with impunity. To remedy this, the Wilson Act of 1890 was passed by Congress, providing that all liquors "transported into any state, or remaining therein, for use, consumption, sale, or storage therein, shall, upon arrival in such state, be subject to the operation and effect of the laws of such state enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state." In 1891 a prohibition law was pronounced constitutional under the Act,[3] as being enacted in the exercise of the state's police powers. The court based its decision on the ground that the Act gave no new powers to the states, but that it simply removed a restriction on their police powers which the silence of Congress (implying that Congress wished interstate traffic in that commodity to be untrammeled by State laws) had imposed upon them.

If a state has the right to prohibit the sale of liquor entirely, it is but logical that it can allow that business to be carried on subject to such regulations as the public welfare demands. On these grounds, a law of South Carolina which gave the state officials a monopoly of the liquor traffic, was held to be within the Wilson Act.[4] Similarly the courts have upheld city ordinances (enacted under state laws) which exact license fees from all liquor dealers and impose on them other "regulations," even though these ordinances result in large revenues.[5] On the other hand a federal court in 1899 held invalid a licensing ordinance, in which no provision was made for regulation or inspection in the interests of the public welfare. Such an ordinance, the Court said, was not a police measure and so not within the Wilson Act.[6] The reasoning of this case seems somewhat arbitrary in implying that a licensing act without "regulation" may not of itself be a police measure, since it may be a means of restricting or even prohibiting the sale of liquors. A broader view of the question has recently been taken by the United States Supreme Court. *Pabst Brewing Co.* v. *Crenshaw*, 25 Sup. Ct. Rep. 552. In this case, a Missouri "inspection law" providing for an examination as to the purity of all beer held for sale in the state was declared constitutional under the Wilson Act, although the fee exacted was

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[1] Mugler *v.* Kansas, 123 U. S. 623.
[2] Leisy *v.* Hardin, 135 U. S. 100.
[3] *In re* Rahrer, 140 U. S. 545.
[4] Vance *v.* Vandercook, 170 U. S. 438 (1897).
[5] Duluth Brewing and Malting Co. *v.* City of Superior, 123 Fed. Rep. 353 (1903).
[6] Pabst Brewing Co. *v.* City of Terre Haute, 98 Fed. Rep. 330.

much greater than was demanded by the somewhat inadequate inspection. This stand of the court, though it rested in part on the fact that a state court had already held the law valid as far as it applied to domestic beer, seems to show a tendency toward a broader interpretation of the term "police powers," allowing the states to exercise more discretion in the control of the liquor trade.

CARRIER'S LIABILITY FOR DELAY CAUSED BY STRIKES. — The reasons of policy which underlie the common law rule that a carrier is liable for loss of goods unless caused by act of God or the public enemy do not hold where the action is for delay in delivery. The fear of collusion between the carrier and robbers which led Lord Mansfield to enunciate the doctrine that a carrier is an insurer,[1] had no application to delay, and a less strict rule of liability has therefore been applied. Where there is no express stipulation in the contract as to the time of delivery, a carrier is bound to deliver within a reasonable time under the circumstances, and where delay arises, the carrier is excused if it has exercised due diligence in the matter.[2] It would seem that this rule should apply to delays caused by strikes among its workmen, as it does to delays arising from other causes. In strikes unaccompanied with violence, a distinction must be made. If the strike is caused by a dispute as to wages, the carrier must pay whatever is necessary to retain its old employees or to obtain new ones to fill their places. It is under a public duty to run its trains regularly, and due diligence therefore requires it to forward its freight at the earliest possible moment without regard to cost.[3] But where it is unable, as in the case of a "sympathetic strike," to fill the places of its recusant employees at any advance in price, it should be excused for delay in the absence of negligence on its part.

A doctrine, however, has gained currency by repetition, though supported by only two decisions[4] (one since weakened by a limiting decision), to the effect that a carrier is liable absolutely for a delay which is caused by a strike unaccompanied with violence. These decisions proceed on the ground that the delay is caused by the misconduct of the carrier's agents, for which the former is liable under the doctrine of *respondeat superior*. They assume that a strike is always wrongful, which would negative the proposition that a man may, in the absence of agreement, terminate his employment when he wishes. But whether the strike is wrongful or not, how long can the acts of former employees impose liability upon their former principal? A principal is liable for the acts of its agents done in the usual course of their employment. But an employee by the very act of striking terminates his agency, so that he is no longer able, except under circumstances working an estoppel, to subject his principal to liability.[5] Consequently, there seems to be no reason for imposing upon the carrier a stricter liability than that which holds him to due diligence in avoiding delay.

When violence is present in a strike, however, the courts have worked

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[1] Forward *v.* Pittard, 1 T. R. 27.

[2] Geismer *v.* Lake Shore, etc., R. R. Co., 102 N. Y. 563; Pittsburg, etc., R. R. Co. *v.* Hollowell, 65 Ind. 188.

[3] People *v.* New York, etc., R. R. Co., 28 Hun (N. Y.) 543.

[4] Read *v.* St. Louis, etc., R. R. Co., 60 Mo. 199; Blackstock *v.* New York, etc., R. R. Co., 20 N. Y. 48; limited by Geismer *v.* Lake Shore, etc., R. R. Co., *supra*.

[5] Geismer *v.* Lake Shore, etc., R. R. Co., *supra*.